IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1982 of 2004
With
LETTERS PATENT APPEAL No. 596 of 2006
With
LETTERS PATENT APPEAL No. 597 of 2006
With
SPECIAL CIVIL APPLICATION No. 13938 of 2005
With
CIVIL APPLICATION No. 4906 of 2006
In
SPECIAL CIVIL APPLICATION No. 1982 of 2004
With
CIVIL APPLICATION No. 4907 of 2006
In
SPECIAL CIVIL APPLICATION No. 1982 of 2004
With
CIVIL APPLICATION No. 8706 of 2004
With
CIVIL APPLICATION No. 8701 of 2004
With
CIVIL APPLICATION No. 6483 of 2005
In
SPECIAL CIVIL APPLICATION No. 1982 of 2004
With
CIVIL APPLICATION No. 7420 of 2005
In
SPECIAL CIVIL APPLICATION No. 1982 of 2004
With
CIVIL APPLICATION No. 7154 of 2005
In
SPECIAL CIVIL APPLICATION No. 1982 of 2004
With
CIVIL APPLICATION No. 5184 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR
AND
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHARDA SAHKARI GRUH MANDALI LTD AND OTHERS
Versus
AHMEDABAD MUNICIPAL CORP. AND OTHERS

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Appearance :

SPECIAL CIVIL APPLICATION No.1982/2004
MR HARIN P RAVAL for Petitioner(s) : 1 - 2.
MR HS MUNSHAW for Respondent(s) : 1, 3,
NOTICE SERVED BY DS for Respondent(s) : 2, 24, 26, 28,
MR MUKESH PATEL, ASST. GOVT. PLEADER for Respts : 4,6 - 9.
MR PR NANAVATI for Respondent(s) : 5,
MR PS CHAMPANERI for Respondent(s) : 10 - 11,13 - 16, 18, 20,
MR RR VAKIL for Respondent(s) : 12, 15, 18,
NOTICE SERVED for Respondent(s) : 14,
MR YF MEHTA for Respondent(s) : 17,
HL PATEL ADVOCATES for Respondent(s) : 19,21 - 23, 25,
None for Respondent(s) : 27,
MR BN DOCTOR for Respondent(s) : 29,
NANAVATI & NANAVATI for Respondent(s) : 30, 32, 35,
MR SHALIN N MEHTA for Respondent(s) : 31,
MR AMIT M PANCHAL for Respondent(s) : 33,36 - 37.
DS AFF.NOT FILED (N) for Respondent(s) : 34,
MR PRAFUL N THAKKAR for Respondent(s) : 35,

LETTERS PATENT APPEAL No.596/2006

Mr.Y.N.Oza for Ms.Sonal R. Shah for the appellant.

Mr.H.S.Munshaw for respondent No.3.

Mr.Mukesh Patel, AGP for respondent No.6.

Mr.P.R.Nanavati for respondent No.7.

LETTERS PATENT APPEAL No.597/2006

Mr.Y.N.Oza for Mr.J.I.Umot for the appellant.

Mr.H.S.Munshaw for respondent No.3.

Mr.Mukesh Patel, AGP for respondent No.6.

Mr.P.R.Nanavati for respondent No.7.

SPECIAL CIVIL APPLICATION No.13938/2005

Mr.Zubin Bharda for the petitioner.

Mr.Mukesh Patel, AGP for respondent No.1.

Mr.P.R.Nanavati for respondent No.3.

Mr.R.R.Vaki for respondent No.4.

CIVIL APPLICATION No.4906/2006

Mr.Harin Raval for the applicants.

Mr.Mukesh Patel, AGP for respondent No.4.

CIVIL APPLICATION No.4907/2006

Mr.Harin Raval for the applicants.

CIVIL APPLICATION No.8701/2004

Mr.D.P.Joshi for the applicant.

Mr.P.R.Nanavati for respondent No.1.

Mr.Harin Raval for respondent No.1.

Mr.Mukesh Patel, AGP for respondent No.6.

CIVIL APPLICATION No.8706/2004

Party-in-person for the applicant.

CIVIL APPLICATION No.6483/2005

Mr.Harin Raval for the applicants.

Mr.H.S.Munshaw for respondent No.1.

Mr.P.R.Nanavati for respondent No.5.

Mr.P.S.Champaneri for respondent Nos.10,13.

Mrs. Sasi V. Parikh for respondent No.11.

Mr. R.R.Vakil for respondent Nos.12, 15, 18.

Mr.Y.F.Mehta for respondent No.17.

CIVIL APPLICATION No.7420/2005

Party – in – person for the applicant.

Mr.P.S.Champaneri for respondent No.1.

Mr.Y.F.Mehta for respondent No.2.

Mr.P.R.Nanavati for respondent No.3.

Mr.H.S.Munshaw for respondent No.4.

Mr.Y.F.Mehta for HL Patel Advocates for respondent No.5.

Mr.Mukesh Patel, AGP for respondent No.6.

CIVIL APPLICATION No.7154/2005

Mr.Harin Raval for the applicant.

Mr.Mukesh Patel, AGP for respondent No.4.

Mr.P.R.Nanavati for respondent No.5.

Mr.P.S.Champaneri for respondent No.11.

CIVIL APPLICATION No.5184/2005

Mr.Amit Panchal for the applicant.

Mr.H.S.Munshaw for respondent Nos. 1, 3.

Mr Mukesh Patel, AGP for respondent No.4.

Mr.P.R.Nanavati for respondent No.5.
Mr.P.S.Champaneri for respondent Nos.10-11, 13, 16, 20.
Mr.R.R.Vakil for respondent Nos.12, 15, 18.
Mr.Y.F.Mehta for respondent No.17.
HL Patel Advocates for respondent Nos.19, 21-23. 25.
Mr.B.N.Doctor for respondent No.29.
Nanavati & Nanavati for respondent Nos.30, 32, 35.
Mr.Shalin Mehta for respondent No.31.
Mr.Amit Panchal for respondent No.33.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

and

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 28/6/2006

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE P.B.MAJMUDAR)

1. All these matters have been heard together and now they are being disposed of by this common judgment, with the consent of the advocates.

2. During the course of hearing of Special Civil Application No. 1982 of 2004,various parties have been joined and notices have been issued, such as various Nagar Palika around the Municipal limits and various telephone companies. Notice was also issued to relevant Departments of the State Government, i.e. Urban Development Department, Revenue Department, Housing Department, Commissioner of Police, Ahmedabad and Collector, Ahmedabad.

Thus several parties have been joined in SCA No. 1982 of 2004, which was initially field only against Ahmedabad Municipal Corporation.

3. During the course of hearing, the learned Single Judge has passed orders from time to time in connection with solving the problem of stray cattle, maintaining and repairing roads within AMC and AUDA limit and for solving the traffic congestion problem caused on account of these factors. For the purpose of making adequate area available to accommodate the stray cattle, orders are also passed for removing encroachments made by cattle owners at Rebari Vasahat. For getting adequate gaucher land available, learned Single has also passed various orders for removing encroachment from gaucher land.

4. So far as Special Civil Application No. 1982 of 2004 is concerned, the same is filed by one Sharda Sahakari Gruh Mandali Limited [hereinafter referred to as the Society]. In the said Special Civil Application, the petitioner Society has prayed that respondent No.1, Ahmedabad Municipal Corporation may be directed to carry out its duties under the Bombay Provincial Municipal Corporations Act, 1949 [hereinafter referred to as the BPMC Act and/or Corporation Act] for repairing and asphalting of the roads of petitioner No.1 Society. The grievance of the said Society in the petition is that on account of heavy rains at the relevant time, the internal road of the Society was damaged, which required repairing and asphalting. It is averred in the petition that roads of petitioner No. 1 Society are to be considered within the meaning of section 52 (o) (a) of the BPMC Act. The learned Single Judge, while entertaining the said Special Civil

Application, took suo motu proceedings in connection with the condition of the roads in the area forming part of the Corporation as well as the area which is forming part of AUDA. The court also took suo motu proceedings in connection with stray cattle on the roads. During the hearing of the petition before the learned Single Judge it was submitted that since there is scarcity of gaucher land and since adequate grazing land is not available for cattle, owners of the cattle are allowing the cattle to move on the roads. It was also pointed out before the learned Single judge that after roads are repaired either by the Corporation or by AUDA, the same is dug by telephone Companies and Electricity Company causing much damage to the repaired roads and inconvenience to the general public. It was also brought to notice of the Court that many a times in order to put pipeline and cable, big holes are also made on the roads. In short, there is total lack of co-ordination between the road constructing authorities and other agencies. Th learned Single Judge also took suo motu proceedings in connection with non-providing of parking facilities by party-plot owners, multiplex theaters, big temples and shopping malls which result into traffic congestion on the roads. It was also brought to the notice of the learned Single Judge that cattle owners have encroached upon gaucher land and have put up unauthorized construction upon gaucher lands which has resulted into stray cattle problem on public streets.

5. On 3rd September 2004, the learned Single Judge passed the following order:

> "It is very unfortunate that though the order was passed as far back as in the year 1997 and directions were issued by this Court to see that the

cattle are removed from the roads. However, the directions and the interim relief passed by this Court is not complied with.

2. Everyday, the citizens are suffering because of the cattle on the roads and there are major accidents due to that. Still there is a casual approach on the part of the authorities for so many reasons. To give a last chance, the respondents, inclusive of the State Government, are directed to comply with the orders dated dated 30-09-1997, 14-10-1997 and also other various orders passed by this Court in SCA No.6963 of 1997. Respondents are directed to see that there are no cattle on the roads and, for that purpose, if the authorities approach the Police Department, the Police Commissioner, Ahmedabad is directed to give all assistance to the Municipal Corporation and AUDA. Respondents are also directed to take the appropriate steps within a period of 01 (one) week from today and submit a compliance report before this Court, failing which proceedings under Contempt of Court will be initiated against the erring officers for not complying with the interim order and directions issued by this Court. Respondents are also further directed to come with a concrete proposal and suggestions what steps they are proposing to resolve the dispute permanently on the next date of hearing.

3. S.O. to 15-09-2004 for submitting the compliance report. If the directions of this Court is not complied with, serious view will be taken against the erring officers.

4. In view of the fact that SCA No.6963 of 1997 was treated as suo motu and this order is passed today, the office is directed to place this matter before the Hon'ble the Chief Justice for orders, whether the matter is to be treated as part-heard before me or not."

The Department thereafter, by its note dated 14.09.04 placed the matter before the Honourable the Chief Justice and the Honourable the

Chief Justice, by order administrative order dated 14.09.04 directed the matter to be treated as part heard before the learned Single Judge [M.R. Shah, J.]. This matter, therefore, was again placed before the learned Single Judge.

6. On 15.09.2004, the learned Single Judge passed the following order:

> "1. Leave to add Secretary, Urban Development and Urban Housing Department, State of Gujarat, Secretary, Home Department, State of Gujarat and Police Commissioner, Ahmedabad City, as party respondents.
>
> 2. Notice to the newly added parties returnable on 30th September, 2004.
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> 3. Mr.Dipen Desai, learned AGP is directed to accept the notice on behalf of newly added parties and directed to get necessary instructions from the concerned department, and is directed to see that some responsible officers from all the aforesaid three authorities be remain present on the next date of hearing. An affidavit-in-reply is filed on behalf of Ahmedabad Municipal Corporation pointing out what steps the Municipal Corporation has taken and what steps the Municipal Corporation is proposing to take for keeping the cattle outside the City of Ahmedabad, and the nuisance with regard to the cattle's on the road is minimised.
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> 4. Mr.S.I.Nanavati, learned Senior Advocate appearing on behalf of the Municipal Corporation and Commissioner, Ahmedabad Municipal Corporation, has stated that necessary circular will be issued and a wide publicity will be given in the Newspaper.
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> 5. S.O. to 30th September, 2004, for further order and for submitting compliance report by Ahmedabad Municipal Corporation.

6. So far as AUDA is concerned, it appears that, inspite of the order passed by this Court on 3.9.2004, the situation within the local limits of AUDA is not improved at all, and there is a total casual approach on the part of the Officers of the AUDA, and approach of AUDA is to ignore the order passed by this Court on 3.9.2004. There is no compliance report submitted by AUDA nor any steps are taken by the AUDA to improve the situation and to see that there are no cattle's on the road and there is no nuisance.

7. Under the circumstances, the Chief Executive Authority, AUDA, is directed to remain present on 30th September, 2004, and is directed to show-cause as to why the contempt proceedings should not be initiated against the erring officers and the AUDA. D.S. for newly added parties is permitted.

( M.R. Shah, J. )

8. After the aforesaid order was passed, Mr.P.R. Nanavati, who appears on behalf of the AUDA, has requested that, instead of passing order directing the CEA, AUDA, to remain present, he will see to it that some responsible officers will remain present on the next returnable date, and in the meantime, some concrete steps will be taken with a view to see that nuisance of cattle on the road can be minimized and he will submit the compliance report on the next returnable date i.e. on 30-09-2004.

9. Considering the aforesaid facts and circumstances of the case, and assurance given by Mr.Nanavati, presence of CEA, AUDA is dispensed with on the next returnable date only."

7. On 13.10.2004, the learned Single Judge passed the following order:

"Leave to join the Collector, Ahmedabad as well as the Secretary, Revenue Department as party respondents. Notice to the newly added parties

returnable on 27.10.2004. Shri Dipen Desai, Ld. AGP waives service of notice on behalf of the Collector, Ahmedabad the Secretary, Revenue Department.

2. Today, when the matter is called out, it is reported by Shri Munshaw, Learned Advocate appearing for the Ahmedabad Municipal Corporation that when the officers had gone to impound the cattle in Vejalpur area, the officers were attacked and some officers are also injured. If this is continued then it is likely to demoralize the officers. Under the circumstances, at the request of the authorities concerned i.e. Ahmedabad Municipal Corporation, AUDA and/or other authorities, the Police Commissioner, Ahmedabad is directed to give additional forces so that the incident which has taken place in Vejalpur area may not be repeated while the officers are performing their official duties which they are performing in addition to their official duties pursuant to the orders passed by this Court.

3. The Collector, Ahmedabad and the Secretary, Revenue Department, State of Gujarat are directed to produce on record the particulars with regard to Gauchar land available at present and which were available earlier. Shri Harin Raval, Learned Advocate appearing for the petitioner who is also appearing as Amicus Curiae has submitted that pursuant to the order passed by this Court, in fact, the authorities did form a Cell comprising of Deputy Commissioner of Police (Traffic), Deputy Municipal Commissioner, Ahmedabad Municipal Corporation, AUDA Chief Executive Officer, Deputy Director, Director of Municipalities, Gujarat and the Deputy District Development Officer, Ahmedabad to examine the laws and rules regarding stray cattle and to make suggestions for controlling the menace. The said Committee is also directed to produce on record the action taken and/or place on record the suggestions for controlling the menace. S.O. to 27.10.2004 for compliance report.

8. On 13.1.2005 , the learned Single Judge passed the following order:

> "Pursuant to the order passed by this Court, an affidavit-in-reply is filed by Shri M.D. Modhiya, Addl. Resident Deputy Collector, Ahmedabad, on behalf of the Collector, Ahmedabad.
>
> It is stated in the said affidavit-in-reply that as per their record there is encroachment on the 'gauchar' land to the extent of 115,42,825 sq.mtrs. by some persons who have encroached upon the land illegally. Along with the affidavit-in-reply Annexure-A particulars are given with regard to 77 villages. It appears from the particulars which are given in the said affidavit-in-reply that particulars are not given with regard to survey number of the 'gauchar' land. Accordingly, the State Government is directed to give particulars with regard to survey number of the 'gauchar' land of 77 villages. It is also submitted in the affidavit-in-reply that Ahmedabad District Panchayat is directed to take appropriate action under the provisions of the Gujarat Panchayats Act, 1993 for removing encroachment in question so that the 'gauchar' land can be released and such communication is dated 25th November, 2004. It is further submitted in the said affidavit-in-reply that various resolutions/circulars are issued by the State Government to see that the 'gauchar' land in the State of Gujarat is protected and there is no encroachment on the 'gauchar' land and latest circular is dated 26th February, 2004.
>
> It is submitted by the learned advocate for the petitioner before me that one another circular was issued by the Panchayat, Rural Housing and Rural Development Department, State of Gujarat dated 30th July, 2003.
>
> Mr. A.D. Oza, learned Government Pleader submitted that time and again apart from issuing the aforesaid circulars/resolutions, instructions are issued to the various authorities to see that there is no encroachment on the 'gauchar' land but there is no

fruitful result so far. It is submitted that even in the Government Circular dated 26th February, 2004 it is stated that inspite of the instructions issued by the State Government time and again, encroachment is not removed and if actions are not taken, then appropriate disciplinary action will be taken against the erring officer. It is further stated in the Government Circular dated 26th February, 2004 that all the Concerned District Development Officers/District Collectors are directed to submit report on or before 10th of every month with regard to compliance report for the purpose of removing the encroachment from the 'gauchar' land.

From the aforesaid Government resolutions/circulars it prima facie appears that the Government is very serious with regard to removal of encroachment on the 'gauchar' land and for the 'gauchar' land for the cattle, but there is lack of coordination and there is no implementation of the aforesaid circulars/resolutions. The State Government is a supervisory authority so far as the various authorities, such as District Collectors/District Development Officers are concerned. Under the circumstances, the Secretary, Revenue Department, State of Gujarat and Secretary of Panchayat, Rural Housing and Rural Development, State of Gujarat are directed to see that their circular dated 26th February, 2004 and 30th July, 2003 are strictly complied with and encroachment from the 'gauchar' land is removed as early as possible. If, ultimately, it is found that the certain authorities and their officers are not complying with their own instructions then as per the circular dated 26th February, 2004, the State Government is directed to strictly implement the same and to take disciplinary action also.

It would be open for the concerned Secretary to send the copy of this order to the concerned District Development Officers/District Collector and in turn the District Development Officers/District Collectors may inform about the circular to all the concerned Talati-cum-Mantri. The office is directed to supply

certified copy of this order to the Government Pleader on or before 19th January, 2005.

It is pointed out by Mr. A.D. Oza from the aforesaid affidavit-in-reply that the Ahmedabad Urban Development Authority (AUDA) has asked for the land which part and parcel of the 'gauchar' land situated at Bakrol, Taluka Daskroi District Ahmedabad for the purpose of constructing 'panjara pole" and the concerned Collector will forward new proposal to the State Government on or before 18th January, 2005 and on receipt of the same the State Government is directed to pass appropriate order as early as possible preferably within a period of six weeks from today. S.O. to 16-2-2005 for compliance of the report."

9. On 4.08.2005 , the learned Single Judge passed the following order:

1. Shri Vijay H. Patel, learned advocate appears on behalf of Makarba, Vastrapur, Bodakdev, Thaltej, Sola, Gota and Nirnaynagar Nagarpalikas / Gram Panchayat and Shri P. S.Champaneri and Shri Y.F.Mehta, learned advocates appear on behalf of Jodhpur and Vejalpur Nagarpalika respectively. The learned advocates appearing on behalf of the aforesaid Nagarpalikas and Gram Panchayats have assured that the orders passed by this Court dated 29.6.2005, 14.7.2005 and 1.8.2005 are being implemented in its true spirit and the same will be implemented and further more steps will be taken to impound the stray cattle which are found on the roads within the limits of their Gram Panchayat / Nagarpalika. Shri Vijay Patel, learned advocate has also stated that even today itself, in all 79 stray cattle's found on the road and local limit of aforesaid Nagarpalikas and / or Gram Panchayat are impugned and at present also further steps are in action and the staff for the purpose on the job. However, Shri Patel, Shri P.S.Champaneri and Shri Y.F.Mehta request for some more time to fully implement the order passed by this Court. However, Shri Patel has requested that there are some difficulties with regard to infrastructure and some

assistance is needed from AUDA. The Administrative Officer of the AUDA is directed to see that full cooperation is given to the concerned Nagarpalika / Gram Panchayat inclusive of shortage of infrastructure, if any. Considering the submissions of Shri V.H.Patel, Shri P.S.Champaneri, and Shri Y.F.Mehta, learned advocates on behalf of the aforesaid Nagapalikas / Gram Panchayat, with a view to give one more chance and opportunity, the matter is adjourned to 11th August, 2005 to submit further compliance report.

2. Shri H.S.Munshaw, learned advocate appearing on behalf of Ahmedabad Municipal Corporation has also requested for time to file Affidavit-in-reply by placing on record the details of the land which was already allotted earlier by the Corporation for rehabilitation of Maldhari community and their cattle's etc in different areas and subsequent resolutions passed by the Standing Committee. He shall file the same on or before 11th August, 2005.

3. Shri A.D.Oza, learned Government Pleader with Mr.H.D.Dave, learned AGP who is also one of the Committee Members and other Committee Members have suggested that they have also received suggestions and objections from the other persons inclusive of Maldhari and Gopalak community etc and they are considering the same and the next meeting of the Committee is scheduled on 10th August, 2005 to discuss the short terms measures and long term measures. He has submitted that one of the suggestions was with regard to registration of the cattle, more particularly, cows and buffalos etc. and if there is registration then it will be easier for the concerned authority to launch prosecution and identify the owners.

4. In above view of the matter, Ahmadabad Municipal Corporation and Ahmedabad Urban Development Authority are directed to consider the aforesaid suggestion and give advertisements in the local newspaper having wide publication informing the

owners of the cattle to get their cattle registered and to inform those persons / owners of the cattle the consequences of non registration of their cattle and give some time limit with regard to registration.

5. So far as the condition of roads are concerned, Shri P.R.Nanavati, learned advocate appearing on behalf of the AUDA has submitted that authority which are responsible for the bad conditions of the roads, are those companies which are required to dig the roads for laying down their wires and / or cables etc. He has submitted that after digging and laying the cables those agencies / companies are not doing any further resurfacing etc. He has also submitted that B.S.N.L., Reliance Infocom Ltd.,Airtel (Bharati) – Bharati Cellular Ltd, Tala Tele Service Ltd. IDEA Cellular Ltd. Ahmedabad Cable Operator Association, and Torrent – AEC Ltd. ( list and address are given separately ). To know their views and to meet with the situation, the aforesaid companies seem to be necessary parties in the present proceedings.

6. Under the circumstances, the aforesaid companies are ordered to be joined as the parties respondents.

7. Notice to the newly added aforesaid companies – newly added respondents returnable on 11th August, 2005.

Direct Service to newly added parties is permitted.

S.O to 11th August, 2005.

Office to the provide copy of this order to the AUDA and AMC forthwith through their learned advocates."

10. On 12.08.2005, the learned Single Judge passed the following order:

1. Leave to join M/s Fascel Limited [ Hutch ] and M/s IDEA CELLULAR LIMITED companies as the party respondents. Necessary amendment in the cause title be carried out forthwith. Notice to the newly added respondents - M/s Fascel Limited [ Hutch ] and M/s IDEA CELLULAR LIMITED returnable on 18th August, 2005. Service of notice on behalf of the aforesaid two companies is waived by Shri Amit Panchal, learned advocate.

2. Shri Vijay Patel, learned advocate appearing on behalf of Thaltej Nagarpalika has submitted that yesterday there was some difficulty because of the fact that now the Administrator is appointed and therefore, there was some lapse on the part of the Nagarpalika. However, he assured to this Court that he will see to it that there will not be any cattle on the roads within the local limits of their Nagarpalika. He has tendered before this Court affidavit-in-reply which is ordered to be taken on record. Further report and compliance report to be filed on 18th August, 2005.

3. Shri Y.F.Mehta, learned advocate appearing on behalf of Vejalpur Nagarpalika has submitted that they have requested time and again to the AUDA and concerned authorities to sanction staff and for providing trolley, tractors and other infrastructure so that the orders passed by this Court can be effectively implemented and complied with. So far as the additional staff is concerned, it will be open for the Vejalpur Nagarpalika and other concerned Nagarpalikas to employ and/or hire the employees temporarily for the said work and purpose of impounding the stray cattle's and cattle's found on road and even such work can be given on contract basis. Shri Mehta, learned advocate for Vejalpur Nagarpalika has also submitted that so far as Vejalpur Nagarpalika is concerned, they have also difficulty with regard to place where to keep the impounded cattle's On this aspect, it is observed that it will be open for the concerned Nagarpalikas to approach AUDA and also the Committee constituted by this Court to allow them for allotment of place / land of AUDA on temporary

basis for keeping the impounded cattle's for some time and upon such request, AUDA shall also consider the such request expeditiously.

4. Concerned Nagarpalikas and Gram Panchayats to submit further compliance report on 18th August, 2005. The aforesaid directions will also be applicable to all concerned Nagarpalikas and they may also approach AUDA and the Committee in case of they are facing any difficulty.

5. Having regards to the issues involved in the present proceedings, and suggestions emerging during the arguments, panel of following advocates are formed for carrying out inspection in different areas of AUDA, AMC and concerned Nagarpalikas and Gram Panchayats.

1.Mr.Nandish Chudgar
2.Mr.Biren Vaishnav
3.Ms.Sangita K. Vishen
4.Mr.Nilay Anjaria
5.Mr.Dhaval C. Dave

6. The above learned advocates are requested to have inspection on different days and submit their independent report, more particularly, on Sarkhej-Gandhinagar High way, C.G.Road, 132 ft ring road and 100 ft road and to submit report on 18th August, 2005 so that it can be seen that whether the orders passed by this Court are being properly implemented and complied with by the concerned Nagarpalikas / Gram Panchayats, AUDA and AMC in its true spirit or not.

7. It is reported that there is good response from the public at large in sending suggestions and after considering the same the AUDA has submitted their report to the Committee and the Committee has after considering the same has accepted some of the suggestions. The Committee to produce minutes as well as suggestions which are accepted by the Committee which were sent by AUDA, on 18th August, 2005. So far as the other suggestions received from

the AMC which are based on the suggestions received by the AMC, the Committee to consider the same in the meeting on the next date on 24th August, 2005.

8. Shri A.D.Oza, learned Government Pleader who is one of the members of the Committee has submitted that in neighboring State Maharashtra, there is an act viz. THE MAHARASHTRA KEEPING AND MOVEMENT OF CATTLE IN URBAN AREAS (CONTROL) ACT, 1976 (MAHARASHTRA ACT XLV OF 1976 ) and the Committee Members had also discussed the same and copy of which is given to the Secretaries of the Departments concerned of the State of Gujarat so that the same can be considered by the State Government. Shri Oza, learned GP assures this Court to produce the copy of aforesaid Act on the next date of hearing i.e on 18th August, 2005.

9. Heard learned advocates appearing on behalf of the newly added respondents – companies which require to dig the roads for the purpose of laying down the cables, who seeks time to file reply. Such reply to be filed on or before 18th August, 2005.

10. In response to the directions issued by this Court earlier directing the Ahmedabad Municipal Corporation to file reply with regard to the lands / plots allotted for the purpose of shifting and rehabilitation of Gopalaks and other like communities and the lands allotted to them for shifting and/or establishing and to facilitate the public at large and to avoid nuisance of stray cattle's in the city area, affidavit-in-reply is filed on behalf of the Ahmedabad Municipal Corporation. It is submitted in the said affidavit-in-reply that Ahmedabad Municipal Corporation has established “Rabari Vasahat” at Jasodanagar of the city of Ahmedabad and initially, Revenue Survey Nos.165, 166 (1 + 2), 167, 170 and 171 were acquired at the village Ghodasar and thereafter, many more plots were given over and above in Odhav and Bagefirdoz areas. It is also submitted in the said affidavit-in-reply that there are encroachments and unauthorised constructions by the allottees / occupants as well as the outsiders in the

entire area and the land in question is not used for harboring the cattle's In other words, the purpose of allotment and shifting is frustrated and the entire huge area admeasuring approximately 4,25,258 sq.yards are used for residential and commercial purpose. Shri Munshaw, learned advocate has also annexed the conditions imposed while allotting the lands in question. In other words according to the Ahmedabad Municipal Corporation, there are breach of conditions and the purpose for which the lands were allotted is frustrated. Affidavit-in-reply filed by the Ahmedabad Municipal Corporation filed today is directed to be taken on record.

11. The Ahmedabad Municipal Corporation is directed to place on record by way of further Affidavit by 31st August, 2005 that in view of the aforesaid affidavit-in-reply what actions the Ahmedabad Municipal Corporation proposes to take in the matter.

S.O. To 18th August, 2005.

Directions above to be complied with strictly, failing which, serious view can be taken by this Court."

11. On 01.09.2005, the learned Single Judge passed the following order:

Heard Shri A.D. Oza, learned Government Pleader and learned advocate, Shri Harin Raval, one of the Members of the Committee appointed by this Court. An Affidavit-in-Reply is filed sworn by Shri Ashwin N. Dave, Under Secretary, Urban Development and Urban Housing Department, in pursuance of the order dated 25th August 2005, along with the Reply, suggestions which have been accepted by the Committee and the Minutes of the Meeting of the Committee convened on 24th August 2005 are produced on record. I have also heard one Shri Maganbhai Rabari, claiming to be representative on behalf of Maldharis and who claims to have done some research work relating to the problems faced by Maldharis and their welfare in Mumbai. He has also

pointed out the difficulties which are faced by the Maldharis and the conditions in which the Maldharis are placed. He has made some suggestions in writing for permanent solution to the problems in the interests of the Maldharis. The same is directed to be taken on record. A copy of the written suggestions as produced by Shri Maganbhai Rabari before this Court is given to Shri A.D. Oza, learned Government Pleader and Shri Harin Raval, learned advocate so that in the next Committee Meeting the same may be considered for further suggestions.

2. Shri Maganbhai Rabari has also submitted that some lands are to be allotted to the Maldharis for their rehabilitation with full infrastructural facilities. This Court had earlier passed the order on the basis of the Report and the particulars given by the Ahmedabad Municipal Corporation according to which it appears 7 lacs sq.metres of land were given to the Maldharis for their settlement and their cattle's in Amraiwadi, Odhav and Jasodanagar areas and their constructions were also regularised. A grievance is voiced by one Shri Harjivanbhai, resident of Odhav that no basic infrastructural facility was given to Maldharis in the area. It is required to be noted here that as per the affidavit-in-reply filed on behalf of the Ahmedabad Municipal Corporation the purpose for which the land is allotted in the aforesaid areas has not achieved its object and the land is misused and/or that there is unauthorised construction and/or illegal encroachment and that if the illegal encroachments are removed the said lands can be made available for betterment of the Maldharis for whose benefit the lands were given, i.e., for their settlement and settlement of their cattle's Under the circumstances, the Ahmedabad Municipal Corporation is directed to undertake survey of the areas in Amraiwadi, Odhav and Jasodanagar with regard to existing construction unauthorised or otherwise put up by other persons and to produce a Report thereon before this Court so that appropriate order can be passed with regard to the lands to be reserved for use by Maldharis for whose benefits the lands were allotted. Such a Report should be

submitted within three weeks. The Officers of the Ahmedabad Municipal Corporation may see to it that there is no cause of unnecessary harassment to the persons who are residing at the said places and this is deemed necessary only with a view to do resurvey of the places and the Ahmeaabad Municipal Corporation is directed to file a Report to that effect. If the officers face any difficulty in the process, it will be open for them to approach the Commissioner of Police for their assistance and the Commissioner of Police shall see to it that the Officers of AMC get all necessary assistance in that regard. The Ahmedabad Municipal Corporation is directed to submit further Report with regard to the action taken by them for impounding the stray cattle's and further directed to fully implement the orders passed by this Court.

4. This Court had passed the order on 13th January 2005 directing the State authorities to submit a Report with regard to unauthorised constructions put up on the Gauchar land and also to see that such illegal constructions are removed in accordance with law. Unfortunately, no further Report is submitted. The Secretaries of State Government, in Revenue Department, as well as Panchayat, Rural Housing and Rural Development Department, are directed to submit their Reports with regard to open Gauchar lands and also the present position as to illegal construction on the Gauchar lands by the next date of hearing. Shri A.D. Oza, learned Government Pleader has submitted that the next meeting of the Committee will be held in a couple of days. It is, therefore, directed that in the next meeting the suggestions given by the said Shri Maganbhai Rabari may also be considered and submit the views on the next date of hearing by this Court. S.O. To 14th September 2005 for further orders on the basis of the suggestions accepted by the Committee. The compliance Reports submitted by the concerned Nagarpalikas are taken on record."

12. On 24.11.2005, the learned Single Judge passed the following order:

1. Heard the learned advocates appearing on

behalf of the respective parties in this petition.

2. Shri P.S.Champaneri, learned advocate appearing on behalf of the Jodhpur Municipality makes a statement at bar under the instructions of his client that so far as Jodhpur Nagarpalika is concerned, all the effective steps will be taken to remove stray cattle's from the public roads vesting and / or within the Nagarpalika inclusive the action that no person will be allowed to keep their cattle's and / or stay the cattle on the road in the local limits of Jodhpur Nagarpalika. This statement is made in presence of the Chief Officer of Jodhpur Nagarpalika i.e. Shri Ashok K. Patel, Chief Officer of Nagarpalika. He has also further submitted that the report will be submitted on or before the next date of hearing and if any cattle's are found on the road within local limit of said area, then, the Chief Officer and / or concerned Officer in charge may be held responsible for non compliance of the orders and / or disobedience of the order passed by this Court and for violation and contempt of the above statement at bar at the instance of his instructions.

3. It is very unfortunate that inspite of the various orders passed by this Court and repeated assurance given to this Court to comply with the directions and orders, either no effective steps are taken by the Ahmedabad Municipal Corporation to remove stray cattle's and / or impound the stray cattle's which are moving free on the road and of which the same are kept on the road and road side for permanent stay and / or there is no supervision by the Officer. It appears that the officers are under the impression that a moment the matter is adjourned, they are not required to do anything till the matter is again notified on the next adjourned date. It is seen that after the matter was adjourned last, till date not only no effective steps are taken even by the Officers of Ahmedabad Municipal Corporation, but on the contrary, number of stray cattle's on the roads have increased. This is nothing but clear disobedience of the orders passed by this Court. Shri H.S.Munshaw, learned advocate appearing on behalf of the Ahmedabad Municipal Corporation requests this Court to give one last chance

so as to enable them to comply with the orders passed by this Court effectively. Earlier also, such repeated assurances were given, however, still before taking any action under the provisions of the Contempt of Court Act and / or for disobedience of the orders passed by this Court, a last chance is given to the Ahmedabad Municipal Corporation. The Deputy Municipal Commissioners of the concerned area of Ahmedabad Municipal Corporation are directed to see that there are not stray cattle on the roads in the entire city of Ahmedabad, failing which, serious view will be taken and the proceedings for disobedience of the orders of this Court will be initiated and if no effective steps are taken, it will be presumed to be non compliance and disobedience of the courts' order on the part of the respondents and Officers of the A.M.C and such action will be treated to be a deliberate action on their part. Shri H.S.Munshaw, learned advocate appearing on behalf of the AMC has submitted that one Capt. Mahajan, Deputy Municipal Commissioner is head of the Cattle Control Department who is in over all control. Under the circumstances, Capt.Mahajan, Deputy Municipal Commissioner is directed to remain personally present before this court on next date of hearing i.e on 2nd December, 2005 at 2.15 p.m.

4. It is submitted by Shri Harin P. Rawal, learned advocate appearing for the petitioner that one of the main causes for stay cattle on the roads is because some persons are selling grass on the roads as well as outside the temples which not only causes hindrance to the traffic but some time it is danger to the life of the human being and citizens. The Commissioner of Police, Ahmedabad and Additional Commissioner of Police (Traffic) are directed to see that those persons who are selling grass on the roads and outside temples, are not permitted to sell grass as nobody can do business of selling grass on the public roads which ultimately result into hindrance to the traffic and allowing stray cattle on road. It is also reported that those persons who are selling grass outside temples and on public roads are having their own cattle's and feeding them through selling grass to be purchased by

charity doers and thereby earning from both ways. The Commissioner of Police and the Additional Commissioner of Police (Traffic) of Ahmedabad are directed to issue directions and circulars to all concerned police stations under their control to see that no person shall sell grass on public roads and outside the temples falling and / or situated in their local limits of AMC and AUDA and of all other Nagarpalikas and Grampanchayats for which the present proceedings are initiated and the orders are passed by this Court. If ultimately it is found that those persons are selling the grass on the public road and outside the temples then, appropriate proceedings will be against the Officers of the concerned Police Officers.

5. Shri Y.F.Mehta, learned advocate appearing on behalf of the Vejalpur Municipality in presence of the Chief Officer has once again assured this Court for full and strict compliance of the orders passed by this Court in the matter as stated above. Shri Mehta, learned advocate has also submitted that due to unauthorised construction on the road lines where the cattle's are kept, inspite of the fact that many allegations are made to the AUDA, there is some difficulties faced by the Nagarpalika. It will therefore be open for the Vejalpur Nagarpalika to move an appropriate application to that effect so that appropriate order can be passed, however, there cannot be any excuse for not impounding the cattle's and / or permit the cattle's on roads.

6. Shri Ashim Pandya, learned advocate for Shri V.H.Patel, learned advocate appearing on behalf of the Bodakdev, Makarba, Gota, Nirnaynagar, Thaltej and Sola Nagarpalika and / or Grampanchayats in presence and under the instructions of Officers of respective concerned Nagarpalika and Grampanchayats viz. Shri V.R.Gohil – Talati-cum-Mantri , Shri M.B. Parmar , Deputy Mamltadar of Bodakdev Nagarpalika and Shri Raj Vakil, learned Advocate appearing on behalf of Ghatlodiya Nagarpalika under the instructions of the Officer

concerned have made statement at bar under the instructions of their respective clients that so far as respective Municipality / Nagarpalika and / or Grampanchayats are concerned, all the effective steps will be taken to remove stray cattle's from the public roads vesting and / or within their local limits inclusive the action that no person will be allowed to keep their cattle's and / or stay the cattle on the road in their local limits. The respective statement is made in presence of the Officer of concerned Nagarpalika / Grampanchayats. They have also further submitted that the report will be submitted on or before the next date of hearing and if any cattle's are found on the road within local limit of said area, then, the Chief Officer and / or concerned Officer in charge may be held responsible for non compliance of the orders and / or disobedience of the order passed by this Court and for violation and contempt of the above statement at bar at the instance of his instructions.

7. Shri Harin Rawal, learned advocate and Shri A.D.Oza, learned Government Pleader have submitted that so far as the final report on the basis of the suggestions received by the Committee is concerned, they are preparing the same and the same will be submitted by the next date of hearing. Shri Oza, learned Government Pleader is directed to place on record the final report on the basis of the suggestions received by the Committee constituted by this Court on 2nd December, 2005 so that the same can be sent to the State Government for their suggestions and final directions and order can be issued to curb the menace of stray cattle.

S.O. To 2nd December, 2005.

8. The Ahmedabad Municipal Corporation and the concerned Nagarpalikas and the Grampanchayats are directed to submit the compliance report on 2nd December, 2005."

13. On 02.12.2005, the learned Single Judge passed the following order:

It appears that one reason amongst others for stray cattle's loitering/squatting on the roads is due to garbage boxes being placed on the side of the roads and because of the reason that the boxes are kept open solid wastes being found strewn on the roads they attract cows and other animals for feeding. Such boxes are kept on either of the roads by the Nagarpalikas and AUDA. Shri PR Nanavati, learned advocate appearing on behalf of AUDA has submitted that gradually all those garbage boxes which are kept open which even create health hazards will be removed and the AUDA as an authority will direct the concerned Nagarpalikas to carry out the work of removing the same. He has prayed before this Court that if some time is granted, the AUDA will be able to come out with a proposal for an alternative system of garbage/solid waste management. Acceding to such request, AUDA and all the concerned Nagarpalikas are granted two weeks' time so as to enable them to remove all the garbage boxes and also to suggest an alternative solid waste management system.

2. So far as the direction issued by this Court with regard to removal of hawkers engaged in selling fodder outside the temples and near the public roads is concerned, Shri A.D. Oza, learned Government Pleader has submitted that the Police Commissioner, Ahmedabad City has already issued a Notification under the provisions of the Bombay Police Act for restraining any person from selling fodder on the public roads inasmuch as the Additional Police Commissioner, Traffic, Ahmedabad City has also sent a circular informing all the Deputy Police Commissioners and other Officers of the Police Stations to act accordingly. He has also further submitted that as many as 61 persons who were found selling fodder on the public roads were prevented from doing so and preventive arrests are made. He has further submitted that the police officer concerned of all the police stations would be constantly monitoring the situation and they would see to it that nobody sells fodder on the public roads or feed the stray cattle with the fodder.

3. Shri AD Oza, learned Government Pleader, who is also a Member of the Committee constituted by this Court, has placed on record a final Report wherein as many as 23 suggestions are made by the Committee inclusive of enactment of relevant Statute and/or effecting necessary amendments authorising removal of encroachments being made on the Gauchar land earmarked for keeping cattle's and also to create awareness amongst the members of Maldhari, Gaupalak, and Rabari communities and seek their maximum cooperation in this respect. Shri Oza is directed to forward this Final Report to the Chief Secretary of the State Government as it is ultimately for the State Government to consider the same and take an appropriate decision on the basis of the suggestions/recommendations made by the Committee. Shri Oza has assured this Court that the said Report will be forwarded to the Chief Secretary, on or before 8th December 2005. On receipt of the same, the Chief Secretary is directed to express the response of the State Government while making their suggestions in respect of the said final Report.

4. So far as the areas which are falling under the limits of AUDA and concerned Nagarpalikas and Gram Panchayats are concerned, Shri Nanavati, learned advocate appearing on behalf of AUDA and other learned advocates appearing on behalf of concerned Nagarpalikas and Gram Panchayats have submitted that now the AUDA has come out with a centralized scheme for impounding the stray cattle's and at the initial stage it has been decided to appoint Contractor for a period of four weeks.

5. Shri Rabari who is appearing as party-in-person representing Gaupalaks, Maldharis etc., has submitted that when the cattle's are impounded cattle's may be subjected to cruelty. To avoid such happenings, it is directed that at the time when stray cattle's are impounded by such contractors, the concerned Nagarpalikas and Gram Panchayats and the AUDA must see to it that such exercise of impounding cattle's is done under the supervision of

the responsible officer of the concerned Nagarpalikas and Gram Panchayats and also AUDA and such officers shall accompany the team entrusted with the task of impounding the cattle's till they safely reach the Panjrapoles and/or the places suggested by the Nagarpalikas and Gram Panchayats and they must see to it that as far as possible no cruelty is done to the cattle's also.

6. Stand over to 23rd December 2005. In the meantime, the Chief Secretary of the State Government is directed to consider the aforesaid Report and submit the response of the State Government."

14. On 23.12.2005, the learned Single Judge passed the following order:

1. It is very unfortunate that inspite of the specific order passed by this Court directing the Commissioner of Police, Ahmedabad and Deputy Commissioner of Police (Traffic) and other police authorities to see that no person shall sell fodder on the public road and near the temples and inspite of the fact that now there is notification issued by the Commissioner of Police banning the sale of fodder on the public road within the city and other areas, it is found that most of the persons who were earlier selling the fodder on the road and near the temple are selling the fodder at the same place, such as on 132 ft. road from Vejalpur Over-Bridge to Subhas Bridge and Satellite area etc. This Court earlier also passed an order that if ultimately it is found that those persons are fodder on the road and near the temple and ultimately hindrance to the traffic, the police officer of the concerned police station will be held responsible. It appears that a Notification came to be issued by the Commissioner of Police only with a view to make a show that the order passed by this Court is complied with. In fact, there is no seriousness about either with regard to compliance of the order passed by this Court and/or implementing the Notification issued by the Commissioner of Police. Under the

circumstances, the Commissioner of Police, Ahmedabad and the Deputy Commissioner of Police (Traffic) are hereby directed to remain present before this Court on 28th December, 2005 at 2.15 p.m. with report showing that what actions have been taken against the erring officers who have not complied with the order passed by this Court and the Notification issued by the Police Commissioner. Either they have not taken any action against those persons who are selling the fodder on public road and near the temple, inspite of the aforesaid order passed by this Court and the Notification issued by the Commissioner of Police, by either not supervising and/or they have failed to discharge their duty to implement the order and the Notification as aforesaid. Mr.H.D. Dave, learned AGP to communicate this order to the aforesaid two officers for compliance.

2. In pursuance of the order passed by this Court earlier directing the Chief Secretary, State of Gujarat to submit the response to the suggestions of the Committee appointed by this Court with regard to the stray cattle, Mr.Dave, learned AGP has tendered Affidavit-in-reply along with response of the Government. The same is directed to be taken on record. Necessary orders / directions on the basis of the same will be issued on the next date of hearing.

3. Office to notify this matter on 28th December, 2005 at 2.15 p.m."

15. On 28.12.2005, the learned Single Judge passed the following order:

1. In response to the order passed by this Court on 23rd December, 2005, Mr.K.R.Kaushik, the Commissioner of Police, Ahmedabad as well as Mr.Vikas Sahayak, the Additional Commissioner of Police (Traffic) are present in the Court. Mr.Dave, learned AGP has produced on record copies of the documents showing the actions being taken against

five Deputy Commissioner of Police namely Police Commissioners of Zone-1, Zone-2, Zone-3 Zone-4 and Zone-5, of Ahmedabad, asking their explanation for negligence in not discharging their duty to comply with the order passed by this Court as well as the Notification issued by the Commissioner of Police, Ahmedabad, banning the selling of fodder on the public roads and near temples. He has also produced on record one statement showing the actions being taken against the erring Police Inspector of 28 concerned Police Stations. Show Cause Notices have been issued to the against those Police Sub-Inspectors and they are directed to show the cause as to why their one yearly increment should not be withheld. He has produced on record copies of the Show Cause Notices issued to those Police Inspectors for not discharging their duty and not complying with the order passed by this Court and the Notification issued by the Commissioner of Police, banning the selling fodder on the public roads and near the temples. The aforesaid documents are directed to be taken on record.

2. Mr.Dave, learned AGP on behalf of the Commissioner of Police, Ahmedabad as well as the Additional Commissioner of Police (Traffic), has assured that henceforth the order passed by this Court and the Notification issued by the Commissioner of Police will be complied with strictly and the same will be supervised and monitored regularly and there will not be any breach of the order passed by this Court and the Notification. The explanation submitted on behalf of the Commissioner of Police, Ahmedabad and the Additional Commissioner of Police (Traffic) are accepted and their presence is dispensed with.

3. S.O. to 12th January, 2006. In the meantime, Mr.Harin Raval, learned advocate to submit his report regarding his grievance that despite the orders passed by this Court, the position is not that much improved and on the contrary one of his colleague who had gone to make the survey pursuant to the oral directions issued by this Court, is hit by the stray cattle near Shivranjani Cross Road, which is

falling within the limits of Jodhpur Nagar Palika / Ahmedabad Municipal Corporation."

16. On 12.01.2006, the learned Single Judge passed the following order:

> 1. Mr.Harin Raval, learned advocate appearing on behalf of the petitioner and as amicus-curie has submitted that it is found that in the recent past, some Companies have dug either the public roads / sides of the roads for the purpose of laying down cables, but they have not re-filled the same and have not restored the position which was prior to digging up the road / sides of the road and the resultant effect is that the same is dangerous to the traffic and the public at large. It is required to be noted that earlier it was pointed out that before digging up the public road / sides of the road, the concerned Companies are required to obtain prior Road Opening Permission and they have to abide by the terms and conditions for granting such permission as per the Road Opening Permission (RPO) and the conditions imposed while granting such permission, the concerned Companies in whose favour the permission is granted, is to be reinstated the roads in a proper moterable condition on completion of cable laying work and asphalt road crossing should be carried out by underground pipe pushing method and asphalt road surface should not be damaged in any condition. Even another condition is that the concerned Company / Telecom Department is required to be reinstated excavated road in a proper moterable condition so that no traffic complaint is reported at AUDA. The concerned Company / Telecome Department is also required to compact excavated soil in proper grade and camber consultation at optimum moisture contact (OMC). However, such conditions are never complied with by some of the Companies. Mr.Raval and Mr.Premal Nanavati have submitted that in the recent past such activity has been carried out by AIRTEL and they have not restore the position of the roads / sides of the roads which were there prior to digging up the roads and sides of the roads.

2. In view of the above, Ahmedabad Urban Development Authority and Ahmedabad Municipal Corporation are hereby directed to produce on record the Road Opening Permissions granted by AUDA in favour of Telecom Companies and/or other Companies to dug the the roads / sides of the roads for the purpose of laying down the cables for a period of last three months and submit the report, after proper inspection by their officers as to whether the relevant conditions are complied with or not and the roads and/or sides of the roads are put to their original position or not.

3. The concerned Telecom Companies are also hereby directed to file their specific reply stating that as to whether the conditions imposed by the competent authorities while granting permission for digging up the road for laying down the cables have been strictly complied with or not, meaning thereby they have restored the position of the roads and sides of the roads which were prior to digging up the road or not, by the next date of hearing, failing which appropriate prohibitory orders will be passed against those Companies.

4. Office to notify this matter on 18th January, 2006 for issuing final directions at 11.00 a.m. "

17. On 1.02.2006, the learned Single Judge passed the following order:

1. In response to the earlier order passed by this Court Shri H.S.Munshaw, learned advocate appearing on behalf of the Ahmedabad Municipal Corporation has tendered one affidavit-in-reply sworn by one Shri Pritam Naran Raut, In-charge Estate Officer, Ahmedabad Municipal corporation, Ahmedabad pointing out that the encroachments of various plots allotted to Rabari Vasahats situated at Amraiwadi, Odhav and Jasodanagar (Old and New) and has submitted that in all 1098 plots / houses with Vadas were allotted to the members of the said community by

Ahmedabad Municipal Corporation in the year 1960 and during the recent survey and inspection of these Vasahats, it is noticed that over and above 1098 plots / house with vadas, there are in all 10,663 illegal construction for residential as well as commercial purposes on the plots / houses with Vadas allotted to the members of the Rabari community as well as on the roads, common / reserved / open space kept by Ahmedabad Municipal Corporation for common amenities and because of that the purpose for which the lands / plots were allotted, has not been achieved. It is also submitted in the said affidavit-in-reply that to over-come this issue of huge encroachments on the roads and open space kept for the public purposes and the encroachments on the original plots and house with Vadas, the authority will take immediate actions for removal of the same in a phased manner and at the first instance, all the commercial encroachments raised on the roads will be removed. It is also further submitted in the said affidavit-in-reply that all the common / reserved / open space meant for public purposes will be cleared by way of removing the encroachments of various kinds. Though it was made clear last time to state on affidavit when and how the Corporation is to take action, no specific particulars are given. Shri H.S.Munshaw, learned advocate for the AMC at this stage after getting necessary instructions from the In-charge Estate Officer Shri Raut who has discussed the issue with the Commissioner of A.M.C. has submitted that the aforesaid entire exercise and proceedings will be completed within a period of six months from today. In view of the affidavit-in-reply and the statement made at bar by Shri H.S.Munshaw under the instructions of the Officer concerned who is present in the court, the Ahmedabad Municipal Corporation is directed to act accordingly and also further directed to submit periodical progress by submitting a report periodically.

2. Shri H.S.Munshaw, learned advocate appearing on behalf of the Ahmedabad District Panchayat has also filed one affidavit-in-reply sworn by one Shri R.B.Barad, In-charge District Development Officer,

Ahmedabad District Panchayat, Ahmedabad and has also produced statement of various Gauchar Land available / allotted to various Gram Panchayats situated within the Ahmedabad District Panchayat. He has also filed one affidavit sworn by one Shri Jashvantbhai Bechardas Patel, Taluka Development Officer, Daskroi, District Ahmedabad. On going through the same, it appears that so far as Bopal village is concerned, according to him, against 22-75-33 Hec.Area lands, in all 22-33-99 Hec.Are. land is available for gauchar purpose. Similarly, particulars are given with regard to other villages situated within the Ahmedabad District Panchayat inclusive of Gota, Vijhol, Chharodi, Sola, Navrangpura, Ambali, Ghuma, Ognaj, Chenpur, Khodiyar, Jetalpur, Bhadaj, Shilaj, Memadpur, and Lambha etc. However, no specific particulars are given. If particulars are given with regard to survey numbers and location, then, it can be verified whether these gauchar lands are available for grazing cattle or not and the same can be used for the purpose for which the land is allotted i.e. for Gauchar land. Under the circumstances, the District Development Officer, Ahmedabad District Panchayat is directed to give particulars with regard to the aforesaid villages i.e. survey numbers, area, location etc. so that the same can be verified by the team to be appointed by this Court and it can be further ascertained that whether said land is actually available for the purpose for gauchar. Said exercise is to be done within a period of two weeks from today.

3. Shri Hasit Dave, learned AGP appearing on behalf of the State Government has requested for some time to produce particulars with regard to gauchar land in fact allotted and / or which is in fact available so far as Makarba, Odhav, Nikol, Naroda, Vastrapur, Thaltej, Bodakdev, Bareja, Vastral and Ramol are concerned. He has requested for time on behalf of the Collector, Ahmedabad. The Collector, Ahmedabad is directed to furnish the particulars with regard to gauchar land initially earmarked for the purpose of gauchar with regard to the aforesaid areas and at present actual land available for gauchar

purpose with particulars like Survey Nos. and Final Plots, location etc. within a period of two weeks from today.

4. S.O. to 23rd February, 2006 so as to enable the concerned respondents and the authority to submit report as stated hereinabove.

An advance copy of the further report / further affidavit be served on Shri Harin P. Raval, learned advocate for the petitioner."

18. On 8.3.2006 , the learned Single Judge passed the following order:

1. With a view to solve the traffic problem in the City of Ahmedabad and in the areas falling within the jurisdiction of of Ahmedabad Urban Development Authority (AUDA), it is appropriate that a joint meeting is held by the Commissioner of Police, Ahmedabad, Commissioner of Ahmedabad Municipal Corporation and Mr.J.G.Pandya, the Chief Executive Officer of A.U.D.A., so as to see that that they may inter-se discuss about the problem with regard to parking on the main public roads, which is suffered by the public at large on account of the fact that there is are no parking facility is provided and/or there is no adequate parking facility is provided by the Cinema-Hall owners, Party Plots, Shopping Malls, and Big Temples, Big Private Hospitals etc. and the persons are compelled to park on the public road. It prima facie appears that even for the purpose of Party Plots, Cinama-Halls, Temples, Malls etc. unless adequate parking facility is provided normally no permission is granted and/or licence is issued.

2. Mr.Dave, learned AGP is requested to submit necessary particulars with regard to the above by the next date of hearing and after the aforesaid meeting, a joint report can be submitted to make certain suggestions.

3. An Affidavit in Reply is filed on behalf of

> the Ahmedabad Municipal Corporation pointing out various locations in different zones of the Ahmedabad Municipal Corporation with regard to the particulars of those persons who are having and keeping their cattle permanently on the roads. Mr.Munshaw, learned advocate has submitted that a time bound programme is fixed by the Ahmedabad Municipal Corporation to see that no person can be permitted to keep their cattle permanently on the public roads and temporary structures will be removed. The said Affidavit in reply is directed to be taken on record. The Ahmedabad Municipal Corporation to submit further report by the next date of hearing. S.O. to 22/3/2006."

19. Being aggrieved by the aforesaid order dated 1.2.2006, LPA No. 597 of 2006 is preferred before this Court by one Nagjibhai D Desai challenging the order of the learned Single Judge on the ground that respondent Corporation may be restrained from demolishing the construction of the appellant living in Amraiwadi Rabarai Vasahat. Similarly, one Veerambhai Govindbhai Rebari has filed LPA No. 596 of 2006 challenging the order of the learned Single Judge dated 1.2.06 with a prayer that the construction of the appellant in New Jeshoda nagar Rebari colony area may not be removed, as it cannot be said that the occupants in the said area are encroachers, as according to the appellant, they are lawfully occupying the area in question. Both the LPAs are also ordered to be heard along with Spl. C.A. No. 1982/04 as the same arise out of interlocutory order passed

by the learned Single Judge in the said Special Civil Application.

20. So far as Special Civil Application No. 13938 of 2005 is concerned, the same is filed by one Karmachari Nagar Co-Op. Housing Society, with a prayer that government should take appropriate proceedings for removal of encroachment caused by hutment dwellers in Ghatlodiya, Ahmedabad as per the order of this Court in SCA No. 1982 of 2004 dated 13.1.2005. It is prayed in the said petition that the direction given by the learned Single judge must be complied with, by removing the encroachments from gauchar land as well as from government land. Since the said Spl C.A. is filed praying for compliance of the order passed in SCA NO. 1982/04, the aforesaid petition is also ordered to be heard with Spl. C.A. No. 1982/04.

21. Thereafter, in view of a judicial order passed by a Division Bench of this Court on 30.3.2006 in SCA No. 3047 of 2006, the Department, by its note dated 04.04.06 placed these matters along with various other matters before the Honourable the Acting Chief Justice, and the Honourable the Acting Chief Justice, by his administrative order dated 18.04.06 has directed all these matters to be placed before this Division Bench. Since all these group of matters are placed by the Honourable the Acting Chief Justice before this Bench, all these

matters are heard and disposed of by this common judgment.

22. In Spl. C.A. No. 1982 of 2004 the learned Single Judge has taken suo motu proceedings in connection with maintenance of roads in AUDA and AMC area, removal of stray cattle on the roads,maintaining adequate grazing land for cattle, removal of encroachments from gaucher land, etc.

23. The foregoing narration shows how much time and labour have been invested by the learned Single Judge and what efforts he has made to ease the problem of stray cattle and to resolve the difficulties of the public at large caused on account of stray cattle, indiscriminate road digging, unauthorised encroachment of public roads etc. It would have been fit and proper that the learned Single Judge should have delivered this judgment and given final directions. However, we have now been assigned this duty and we are discharging it, but we will be failing in our duty if we do not acknowledge with appreciation the anxiety of the learned Single Judge and the efforts put in by the learned Single Judge to reduce the harassment of the people and to do some public good. We may also make it clear that by this, we have simply expressed our sense of appreciation and we may not be understood to have expressed any opinion, either

expressly or impliedly on any of the issues raised before us.

24. On the basis of various orders passed by this Court, a committee was constituted by the learned Single Judge. The said Committee submitted its report wherein various suggestions have made in order to solve the problem of stray cattle. Before submitting its report, the Committee invited suggestions from the general public. The Committee also considered the provisions enacted in the Maharashtra Keeping Movement of Cattle in Urban Areas [Control] Act, 1976. The Committee also considered the suggestions which were received from the general public and discussed them in detail in the Report. Principal Secretary of the Revenue Department of the State, Principal Secretary of the Urban Development and Urban Housing Department, Secretary, Home Department were also the members of the said Committee. The Committee has given detailed report,suggesting various measures for solving the problems in question. The Committee in its report has suggested that various statutory provisions as enacted and existing in different enactments such as sections 238, 239, 240, 241, 242, 243,245 of the Gujarat Municipalities Act read with sections 182, 183, 184, 185, 186, 189, 190 and 192 of the Gujarat Panchayats Act, sections 4, 5, 6, 8, 11, 12, 13, 14, 15, 19, 24 and 31 of the Cattle Trespass Act, 1871 and

various provisions under the BPMC Act and Bombay Police Act may be strictly enforced by the relevant authorities charged with the implementation of these statutory provisions. The Committee also suggested that the provisions of the Maharashtra Keeping Movement of Cattle in Urban Areas [Control] Act should be carefully studied and similar provisions by way of appropriate legislation, if necessary, should be adopted in the State of Gujarat also. The Committee also recommended compulsory registration of all cattle, Buffalos, cows and any such animals under the BPMC Act. There is also suggestion that the cattle owners should be directed compulsory cattle census and regular health inspection through civil authorities. It is also suggested that liability and responsibility of any stray cattle should be fixed on the concerned owners and they should be made accountable for the movement of their cattle on the public roads and accordingly, the liability of the cattle owners should be fixed. It is also suggested to create necessary infrastructure by way of Panjrapoles and allotting lands at the outskirts of the city or any such area deemed fit to house such cattle and similar animals which are impounded or which are found wandering on the public roads and streets or which are not claimed by anyone. A suggestion is also made to educate and create awareness amongst the members of the Maldhari community, Rabaris, Gopalaks etc. as it is found that they

are not very educated and literate. It is also suggested that staff trained for catching and impounding cattle may be appointed by all public agencies like Municipal Corporations, Nagarpaliakas, Panchayats, Urban Development Authorities in such a manner that they are a permanent set up in this respect. It is also suggested that over and above this, necessary staff should be recruited through contract agencies It is also suggested to provide adequate and sufficient protection to the staff who is in charge of impounding stray cattle on the roads. It is also suggested that police also should make adequate arrangements for providing proper protection to such members of the team. It is also suggested that licensing to keep any animal including cattle should be now made more effective by the authorities. Suggestions are also made for removal of encroachment from gauchar land etc. Thus, the Committee, after considering the suggestions of the general public, has made various suggestions in its detailed report, which is placed on the record of the present proceedings. In our view, when the learned Assistant Government Pleader has also pointed out that the Government has in principle decided to accept the said report, in our view, the problems which are required to be dealt with by us in this petition can be well solved by the Government by taking appropriate steps as suggested by the committee in its report.

25. Civil Application No. 5184 of 2006 is filed by learned advocate Mr. Amit Panchal in connection with inadequate provision of parking facility, seeking enforcement of parking provisions as required under the statute which is. It is argued by Mr. Amit Panchal that in the Development Plan, provision is made in connection with parking place. It is argued by him that in view of the judgment of the Division Bench of this Court in the case of Consumer Protection Council vs. Ahmedabad Municipal Corporation and others reported in 2000 (3) GLR 2607 and in the case of Ahmedabad Municipal Corporation vs. Vijay Owners' Association reported in 2000 (3) GLR 2505 AUDA as well as AMC must ensure that appropriate parking place is available by following the said judgment.

26. On behalf of the petitioner, Mr. Harin Rawal submitted that the reports submitted by the Committee, which is in principle accepted by the State Government, is required to be strictly complied with by the State, for which proper monitoring is required to be made. It is argued by Mr. Rawal that the Court should keep the matter pending and from time to time, give appropriate directions in order to ensure that there is proper compliance of the directions given by the Court and that the report of the committee is complied with in its true spirit.

27. Mr. S.N. Shelat, learned senior advocate appearing for the Municipal Corporation submitted that so far as the area known as Rebari Vasahat is concerned, the land is allotted by the Corporation in the year 1955 for the purpose of “vasahat”. Mr. Shelat further submitted that allotment order is issued in favour of various persons on certain conditions. He further submitted that some of the occupants have encroached upon upon more land or have violated some of the conditions of allotment. Mr. Shelat further submitted that in a given if it is found that any condition of allotment is violated by any allottee/occupant, appropriate proceedings will be taken in accordance with law for such breach of condition of allotment. Under the circumstances, we direct the appropriate authorities to take appropriate action in accordance with law in case it is found that any of the allottee / occupant has committed breach of any of the conditions of allotment. The appropriate authorities, after following principles of natural justice, may act against such erring allottees / occupants in accordance with law.

28. So far as the question about not providing proper parking facility etc. either by any party-plot owner or by any builder / occupant of any building is concerned, it is submitted by Mr. Shelat that appropriate

action will be taken in accordance with law, if it is found that there is any violation of the building plan or violation of permission granted to such building. We accordingly direct the appropriate authority to take appropriate action in connection violation of building plan or violation of rules and regulations which govern parking facilities.

29. So far as LPA No. 596/06 is concerned, learned Senior counsel, Mr. Y.N. Oza submitted that so far as Rebari vasahat land is concerned, his client was not a party to the main Special Civil Application, and, therefore, without hearing them, no such such directions could have been issued by the learned Single Judge for removing the construction etc. Mr. Oza further submitted that it is not his contention that roads should not be kept in a proper condition by the appropriate authorities, or that stray cattle should not be removed from the roads. Mr. Oza however submitted that since certain directions were given which are in the nature of PIL, such directions could not have been given by the learned Single Judge because as per the roster, PIL was required to be placed before the Division Bench. Mr. Oza further submitted that if this Division Bench now considers the aforesaid submission afresh, he will not press his submission about the order of the learned Single Judge to the effect that whether the learned Single Judge could have initiated such suo

motu proceedings by giving various directions. Since now we are examining the point raised before us on its own merits, in view of the submissions made by learned Mr. Oza that he will not press this submission if this Division Bench considers the question afresh, it is not necessary to consider the submissions of Mr. Oza whether the learned Single Judge has rightly taken suo motu proceedings by giving various directions.

30. Mr. Harin Rawal, on the other hand, submitted that the then Honourable the Chief Justice had permitted the learned Single Judge to hear the said matter by permitting the learned Single Judge to keep the said matter as part heard. He, therefore, submitted that the directions given by the learned Single Judge should be complied with. However, since the entire issue involved in the petition is now dealt with by this Division Bench, we have on our own examined the entire question and we have also noted the submission of Mr. Oza that now he is not pressing the said point whether the learned Single Judge was justified in issuing the directions by treating the matter as PIL.

31. We have heard all the advocates at great length and have also gone through various affidavits filed in these matters as well as the

orders passed by the learned Single Judge in Spl.C.A. No. 1982 of 2004.

32. It is, no doubt, true that because of the growth in population, well maintained roads with adequate width is the need of the day. From the various orders passed by the learned Single Jude, it has been pointed out to us that in most of the areas coming within the Municipal as well as the AUDA limits, roads were totally damaged and people at large were finding extremely inconvenient to ply their vehicles on such roads. It is also pointed out to us that repairing work of various roads have been done and the same have been put in good condition by the concerned authorities. It is assured by the authorities that proper care will be taken in advance before monsoon starts in order to ensure that the roads continue to be maintained in a proper manner.

33. The Court is also informed that in view of various orders passed by the learned Single Judge, at present, the problem of stray cattle have also been solved to a great extent. This Court is also informed by the authorities that during monsoon, proper monitoring and care will be taken to see that the problem may not revive again.

34. The Committee appointed by the Court has undertaken great labour in order to find out a just solution to the problems poised in the proceedings. The Committee held various meetings from time to time. The Committee has also invited various suggestions and objections from the public at large, in view of the order passed by the learned Single Judge on 14.7.2005. As per the letter addressed by the Government to Mr. A.D. Oza, the then Government Pleader, the Principal Secretary of the Home Department has pointed out that it is the primary duty of the local body to ensure that no stray animals are found on the roads and police authorities are asked to protect various officers from any attack by the cattle owners. It is suggested by the said officer that the problem of catching stray animals should be left to the local bodies and police should be asked to provide adequate security to such officer. The learned Assistant Government Pleader has pointed out that the State Government has in principle decided to accept the report of the Committee, as stated in its reply affidavit as under:

> "The State Government [the Chief Secretary] has duly considered the report submitted by the committee as formulated under the directions of the Hon'ble Court and is pleased to submit the parawise response to the same vied the annexure Exhibit-II annexed herewith. On detailed consideration of the report, the State Government is pleased to submit its suggestions for implementation and is keen to strictly enforce the provisions of the various Acts and such other

> suggestions to curb the menace of stray cattle as directed by the Hon'ble Court. ... ... ... The State Government is equally seriously concerned with the issue of effectively curbing the menace of stray cattle on public roads and streets and is fully ready and willing to do the needful in effectively resolving this problem".

34. Considering the aforesaid aspect of the matter and when the authorities have also taken the issue seriously for solving the problem of stray cattle and for maintaining the roads of the City, in our view, it would not be necessary to keep the matter pending, and we hope and trust that the Government shall act in its true spirit and see that various recommendations are complied with and enforced in serious manner so that the Court is not required to intervene into the matter to find out whether the recommendations of the committee and the directions issued by the court are properly complied with or not. It is unfortunate that though there are ample provisions in various Acts such as the BPMC Act as well as the Panchayat Act, the authorities in charge of implementing the aforesaid provisions have not properly discharged their duties nor any vigilance is shown for implementing the said provisions with the result that the said provisions remained in the statute book without the same being implemented in proper spirit. Various provisions referred to in page 23 of this judgment cast duty upon the State Government as well as

local civil bodies to curb the menace of stray cattle and removed unauthorised encroachment on public roads and also to see that the public roads are constructed and maintained in good condition so as to facilitate smooth flow of traffic. These authorities have also been equipped with power and provided with adequate machinery to fulfill these objects. When this be the position, it is not only moral but statutory obligation which is required to be discharged by these authorities faithfully and with all sincerity. Any callouse or indifferent attitude of these authorities has to be looked upon by this Court very seriously. Law on 'right to life' under Art. 21 of the Constitution of India is very well defined and it is therefore fundamental right of the public to enjoy life free of stray cattle menace, traffic congestion etc. This Court is well within its bounds to issue appropriate directions to concerned authorities if the public is deprived of this right. When a particular act is enacted, the authority concerned is required to implement the same in its true spirit. The provisions in the statute is not required to be kept dormant and the same is required to be implemented. However, we have found that the authorities have remained completely oblivious to the surroundings and harassment caused to the public on account of lack of implementation of these provisions. It is high time that the authorities wake up from its slumber by implementing various laws as discussed hereinabove.

We direct the authorities to implement the said provisions forthwith. Now that we have been given to understand that the State Government has decided to follow the principle of "better late than never" and to accept the report of the Committee, the State shall do the needful for implementing the said report and for that purpose, appropriate directions be given to various local authorities such as Municipal Corporations, Municipalities, Panchayats as well as to the development authorities throughout the State. It is directed that the State shall take appropriate decisions immediately in connection with the acceptance as also the implementation of the report submitted by the Committee.

35. We also direct the local authorities, such as Municipal corporations, Municipalities, Panchayats, Development Authorities to regularly inspect the condition of the roads within their limit and condition of the roads should be inspected before the monsoon and maintained after the monsoon. For the purpose of digging of roads for the purpose of laying cable, pipeline etc. by Electricity Company, Telephone Companies and other agencies providing water, gas and sewerage facilities etc. shall inform each other in advance before digging out and also shall work in close co-ordination with the local authority which is required to maintain the condition of the road. The

local authorities are also directed that as and when they propose to construct new road or resurface the existing road in any area, they should intimate well in advance the aforesaid agencies and call upon them that if they so desired, they should carry out their projects before the commencement of construction of road by local authority in that area. We also direct that the aforesaid agencies as well as other similar agencies that whenever they find necessary to dig the road, they should first obtain permission of the concerned local authority and only upon receiving the permission should commence the work, and the local authority shall grant permission only upon receiving an undertaking from the concerned agency that upon completion of the work, the road shall be resurfaced to its original position. In the event of any non-compliance of these directions or breach of such undertaking, the local authority shall prosecute the relevant officers of the concerned agency for causing damage to public property since concerned officers will be personally accountable for the lapses.

36. So far as the question of maintaining roads are concerned, roads are required to be inspected periodically so that if any repairing work or resurfacing work is is required, the same can be accordingly done so that public at large may not face any difficulties. The concerned

authorities shall monitor this aspect regularly. It is the duty of the concerned authorities to ensure that the work is allotted to such contractors who are capable of doing such work without delay and at the same time, without compromising with the quality. The concerned authorities shall monitor the condition of the roads regularly and if it is found that roads are damaged due to heavy rainfall or by any other reason whatsoever, the authority shall see to it that without any undue delay, the same is repaired or re-surfaced.

37. As regards the encroachments at Rebarai Vasahat areas are concerned, as pointed out by us earlier, the Municipal Corporation is directed to take appropriate action in accordance with law against the erring allottees / occupiers, who according to the Corporation, has violated the terms of allotment. If it is found by the authority that any allottee / occupant has encroached upon the area, the appropriate authority is directed to take appropriate action in accordance with law and may pass appropriate order after haring such erring allottee / occupant so that the said area can be available for the purpose of keeping cattle. The authorities, at the time of taking action may also consider whether there is any breach of condition of allotment. However, it is made clear that before taking action, the affected persons must be given an opportunity of hearing

and principles of natural justice must be followed.

38. Similarly, so far as party plots are concerned, it is argued by Mr. Harin Rawal that in view of inadequate parking facilities, people using the party plots are parking their vehicles on the street, which creates traffic congestion and disturbs smooth flow of vehicles on the road. In this connection, the concerned authorities are directed to take appropriate action in accordance with law, and if it is found that any party plot owner has not provided adequate parking facilities and commits breach of any rules or regulation, appropriate action shall be taken against such persons in accordance with law after hearing the concerned persons in this behalf.

39. As regards the problem of stray cattle/animals on the roads are concerned, the concerned authorities shall enforce appropriate laws in connection with the same. Appropriate preventive as well as curative measures will be taken by the concerned authorities to prevent this problem more effectively during monsoon period. It is also directed that appropriate authorities shall take appropriate action against the owners / persons who are leaving their cattle to stray on the roads so that such persons are not tempted to repeat the same again. The State is directed to give adequate and proper

police protection to the concerned authority / person who is in charge of catching and impounding stray cattle and animals on the public roads so that the said works can be effectively done by the said authority.

40. So far as gauchar land is concerned, if it is found that there is any encroachment on such lands, the concerned authorities shall take appropriate action to see that such gauchar land is made available for grazing cattle. Adequate gauchar land is required to be maintained even as per the provisions of the Panchayat Act and other laws.

41. Due care is required to be taken by Telephone Companies, Electricity Company, and other agencies who dig up the roads for laying cables, pipeline etc. Such authorities shall dig up the roads or lay trenches only after taking due permission from the Municipal Corporation, Development authorities and/or Panchayats. Maximum care shall be taken not to damage the asphalted portion or the road. Permission to dig up or lay trenches on the roads must be granted only on an undertaking that as soon as the work is over, either the party who dug the road shall by themselves fill up the ditches/trenches and resurface the road, or shall, even prior to the

commencement of the digging work, work in consultation and in close co-ordination with other departments who are required to repair and/or resurface the roads so that as soon as the work is over, the roads can be repaired / resurfaced. If the roads are not resurfaced and/or repaired immediately after the work and if any accident / damage is caused due to non-repairing / non-resurfacing, the party who was granted permission to dig the road and/or lay trenches shall be responsible for the same and in appropriate cases, even personal liability can be fastened if the concerned person is found negligent in this aspect.

42. So far as Civil Application No. 5184 of 2006 filed by Mr. Amit Panchal is concerned, the concerned authorities shall also monitor whether adequate space is provided in buildings and party plots, and if there is any violation of either the permission granted to them or any provisions of the Development Plan, appropriate action shall be taken for violation of the permission / development plans, and also to ensure that adequate space is made available for parking. It will be open to the concerned authorities to take all actions if it is found that there is a violation of the permission granted or if there is any violation of any provisions of law. In this connection, the appropriate authority is directed to take appropriate follow up action.

43. The authorities shall comply with the aforesaid directions strictly and no laxity may be shown in implementing the directions given in this order.

44. We are sure that continuous supervision and monitoring will be done by the appropriate authorities in connection with the problems regarding maintenance of of roads, monitoring the condition of roads during the pre-monsoon, monsoon and post-monsoon periods, and also in solving the problem of stray cattle, providing adequate parking facilities at various buildings and party plots. It is also hoped that appropriate action will be taken in connection with removal of encroachments from gauchar lands.

45. Spl. C.A. No. 1982/04 is disposed of with the aforesaid directions. Since the real issue involved in the petition is not dealt with, Mr. Rawal requests that the petitioner may be permitted to file a fresh petition so far as the prayer made originally made in SCA No. 1982/04 is concerned. Accordingly, while disposing SCA No. 1982/04, permission is granted to the petitioner to file fresh petition on the same cause of action on which the said petition was filed.

46. In view of the above directions, Mr. Oza and Mr. J.I.Umot state that they are not pressing the Letters Patent Appeals. The same are accordingly disposed of as not pressed.

47. In view of the above order, no orders are required to be passed in the Civil Applications, and all Civil Applications are also disposed of accordingly. Notice /Rule, wherever issued, stand vacated.

48. Before parting with the judgment, we would like to place on record the work of the Committee which they have undertaken in view of the order passed by the learned Single Judge. The members of the Committee had done extensive work by spending their valuable time. The Court also appreciates the assistance rendered by learned advocate Mr. H.P. Rawal during the course of the hearing of this matter.

[P. B. MAJMUDAR, J.]

[AKSHAY H.MEHTA, J]

mathew